

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Elizabeth Gray,) Civil Action No. 2:14-1207-DCN-BM
)
Plaintiff,)
)
v.) **Report and Recommendation**
)
American Homepatient, Inc.,)
)
Defendant.)
)

On March 18, 2015, Defendant filed a Motion for Partial Dismissal and to Strike Plaintiff's Amended Complaint. The Plaintiff filed a response on April 6, 2015, objecting to the Motion for Partial Dismissal and to Strike, stating that the issues addressed in that motion have already been dealt with in the Court's Order filed on March 3, 2015. The undersigned then entered an Order specifying that while certain issues in the Defendant's Motion were dealt with in the Court's March 3, 2015 Order, Plaintiff's Amended Complaint raises a new cause of action under S.C. Code § 41-1-70, which was not previously considered. See Court Docket No. 32, filed on April 9, 2015. Therefore, Plaintiff was directed to respond to the Defendant's Partial Motion to Dismiss and Strike with regard to that cause of action, unless alternatively Plaintiff notified the Court that she has no objection to this cause of action being dismissed.

Despite these instructions, however, Plaintiff did not respond to the Court's order. Further, the undersigned is constrained to note that when Plaintiff filed her Answer to Local Rule 26.03 Interrogatories, she listed her only claim as being a Violation of the FMLA. See Court Docket



No. 37, p. 3. Therefore, it appears that Plaintiff does not object to the dismissal of her newly added cause of action under S.C. § 41-1-70.

Accordingly, the undersigned recommends **granting** Defendant's Motion for Partial Dismissal and to Strike, and **dismissing** Plaintiff's claim under S.C. §41-1-70.¹



Bristow Marchant
United States Magistrate Judge

April 30, 2015
Charleston, South Carolina

¹The remainder of the issues raised in that motion were mooted by the Court's Order filed on March 3, 2015. See Court Docket No. 32, filed on April 9, 2015.

